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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

HOWARD L. HOWELL, Lead Plaintiff,
ELLISA PANCOE, Individually and on
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

JB, INC., f/k/a 310 HOLDINGS, INC.,
JOHN BORDYNUK, and RONALD
BALDWIN, JR.,

Defendants.

Case No. 3:11-CV-00545-RCJ-WGC

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF
THE PROPOSED SETTLEMENT, CLASS CERTIFICATION, THE PLAN OF
ALLOCATION, AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF
LEAD PLAINTIFF'S COSTS AND EXPENSES**

I. INTRODUCTION

Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for Notice of Proposed Settlement dated December 18, 2014 ("Preliminary Approval Order") (Doc. 96), and as a supplement to the initial filings in support of the motion for final approval of the Settlement and motion for attorneys' fees and reimbursement of Lead Plaintiff's costs and expenses made by Lead Plaintiff and Lead Counsel (Doc. 97-103), Lead Plaintiff respectfully submits this Reply Memorandum to inform the Court of the following information regarding the mailing and publication of Notice to the Class and the Class' reaction to the Settlement.¹

To date, there have been no objections received regarding the Settlement and only six requests for exclusion from the Settlement.² There has not been any objection to the Plan of Allocation, Application for Attorneys' Fees and Reimbursement of Expenses, and Lead Plaintiff Award. Based upon the Class' favorable response, as well as the other relevant factors in Lead Plaintiff's opening papers, it is respectfully requested that the Court grant final approval to the Settlement and award the requests for fees and costs.

II. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Notice Was Provided To The Class As The Court Ordered

In accordance with the Preliminary Approval Order, the claims administrator in this case – Gilardi & Co., LLC ("Gilardi") – initiated a mailing of the Notice on January 21, 2015. *See*

¹ All "Doc." references are to entries on the Court's Electronic Case Filing System.

² Some of the requests for exclusion are procedurally defective in that they have not identified how many shares of stock they purchased, provided any of their transaction information, or provided evidence that they are class members. Nevertheless, their requests to exclude themselves are being acknowledged and included on the exclusion list.

Declaration of Ex Kano S. Sams II in Support of Reply Memorandum in Support of Motion for Final Approval of the Proposed Settlement, Class Certification, the Plan of Allocation, an Award of Attorneys' Fees and Reimbursement of Lead Plaintiff's Costs and Expenses ("Sams Decl."), Ex. 1 (Supplemental Declaration of Nashira Washington re: A) Mailing of the Notice of Proposed Settlement Class Action, Motion for Attorneys' Fees, and Settlement Fairness Hearing and Proof of Claim and Release, B) Publication of the Summary Notice, and C) Website Posting ("Washington Decl.")), ¶3. Gilardi completed the mailing to 2,495 potential members of the Class on January 21, 2015. *Id.*

Also in accordance with the Preliminary Approval Order, Gilardi requested from the transfer agent for JBI, Inc. ("JBI") a list of all persons or entities who purchased JBI's securities between August 28, 2009 and January 4, 2012, inclusive (the "Class Period"). *Id.*, ¶4. Additionally, Lead Counsel provided Gilardi with lists of information obtained from Defense Counsel that contained names and addresses of JBI private offering investors and other shareholders during the relevant period. *Id.* The list sent from the transfer agent and that from Lead Counsel were reviewed to identify and eliminate duplicate entries and incomplete data, resulting in a usable mailing list of 2,495 names and addresses. *Id.* Gilardi caused the unique name and address data to be printed onto Claim Packages, posted for first-class mail prepaid, and delivered on January 21, 2015 to the United States Post Office located in Santa Rosa, California. *Id.* The total number of Claim Packages mailed on January 21, 2015 to those potential members of the Class was 2,495. *Id.*

As part of the Notice mailing procedure, Gilardi also sent Claim Packages and cover letters to a list of 250 brokerages, custodial banks, and other institutions ("Nominee Holders") that hold securities in "street name" as nominees for the benefit of their customers who are the

beneficial owners of the securities. *Id.*, ¶5. This list also included a group of filers/institutions who requested notification on every securities case. *Id.* These Nominee Holders were included in a proprietary database created and maintained by Gilardi. *Id.* In Gilardi's experience, the institutions included in this initial mailing represented a significant majority of the beneficial holders of securities. *Id.* The cover letter accompanying the Claim Package advised the Nominee Holders of the proposed settlement and requested their cooperation in forwarding the Claim Package to potential class members. *Id.* In the over 25 years that Gilardi has been doing notification of securities class actions, Gilardi has found the majority of potential class members hold their securities in street name and are reached through the Nominee Holders. *Id.*

On January 21, 2015, Gilardi delivered electronic copies of the Claim Package to 446 registered electronic filers who were qualified to submit electronic claims. *Id.*, ¶6. These filers are primarily institutions and third-party filers who typically file numerous claims on behalf of beneficial owners for whom they act as trustee or fiduciary. *Id.* Gilardi additionally caused the Claim Package to be published by the Depository Trust Corporation ("DTC") on the DTC Legal Notice System ("LENS"). *Id.*, ¶7. LENS enabled the participating bank and broker nominees to review the Claim Package and contact the Claims Administrator for copies of the Claim Package for their beneficial holders. *Id.*

Additionally, Gilardi has acted as a repository for shareholder and nominee inquiries and communications received in this action. *Id.*, ¶8. In this regard, Gilardi has forwarded the Claim Package on request to nominees who held JBI securities for the beneficial interest of other persons. *Id.* Gilardi also forwarded the Claim Package directly to beneficial owners upon receipt of the names and addresses from such beneficial owners or nominees. *Id.*

To date, in response to the outreach efforts described above, Gilardi received thirty-four (34) responses that included computer files listing a total of 5,486 unique names and addresses of potential Class Members. *Id.*, ¶9. Gilardi also received nine (9) responses that included mailing labels with names and addresses for mailing to an additional twenty (20) potential class members. *Id.* Six (6) institutions requested that Gilardi send them a total of 775 additional Claim Packages, which they indicated they would mail directly to their clients who might be class members. *Id.* As a result, Gilardi sent a total of 9,472 Claim Packages to potential Class Members and Nominee Holders. *Id.*, ¶10.

Also in accordance with the Preliminary Approval Order, Gilardi caused the Summary Notice to be published once in *Investor's Business Daily* and once in *Globe Newswire* on February 3, 2015. *Id.*, ¶12. Gilardi established a case-specific, toll-free number to accommodate potential Class Member inquiries. *Id.*, ¶13. This toll-free number, (888) 283-2856, became operational on or before January 21, 2015. *Id.* Gilardi also posted copies of the Notice, the Proof of Claim and Release, the Stipulation of Settlement with exhibits, and the Preliminary Approval Order on the case-specific website, www.JBISecuritiesLitigation.com, on January 21, 2015. *Id.*, ¶14. Thus, the Notice Program established and implemented by Gilardi comported with the directives of the Preliminary Approval Order and provided adequate notice of the Settlement to members of the Class.

B. The Overall Reaction of the Class Strongly Supports Approval of the Settlement

As Lead Plaintiff demonstrated in the opening papers in support of the Settlement, the Class' reaction is an important factor in determining whether the Settlement should be approved. Here, the Class overwhelmingly supports the Settlement. Of the more than 9,472 Claim Packages sent to members of the Class, there have been no objections received. *Id.*, ¶¶14-15.

Additionally, there have only been six requests for exclusion from the Settlement received. Sams Decl., Ex. 2. Such reaction is a reason the Court should grant final approval of the Settlement. *See, e.g., Ahdoot v. Babolat VS N. Am., Inc.*, No. CV 13-02823-VAP VBKX, 2015 WL 1540784, at *8 (C.D. Cal. Apr. 6, 2015) (“The lack of any objection whatsoever by Class Members to the Settlement Agreement weighs in favor of approval.”); *Lusby v. GameStop Inc.*, No. C12-03783 HRL, 2015 WL 1501095, at *6 (N.D. Cal. Mar. 31, 2015) (holding that the reaction of the class supported final approval where “[n]one of the Class members have objected to the Settlement” and “there was only one valid opt-out”); *Roeder v. Atl. Richfield Co.*, No. 3:11-CV-00105-RCJ, 2013 WL 5878432, at *11 (D. Nev. Oct. 21, 2013) (holding that “based on the small number of exclusion requests, it appears that Members of the Settlement Classes do not seek to pursue their own litigation but are willing to accept the benefits of the proposed settlement”); *Chun-Hoon v. McKee Foods Corp.*, 716 F. Supp. 2d 848, 852 (N.D. Cal. 2010) (“The reaction of the class members to the proposed settlement, or perhaps more accurately the absence of a negative reaction, strongly supports settlement.”).

III. CONCLUSION

For the reasons set forth herein and in the opening memoranda and other papers in support, and following an extensive Notice program, Lead Plaintiff respectfully submits that the Settlement is an excellent result for the Class, and that the Plan of Allocation of the Settlement proceeds is a fair and equitable method for distributing the Net Settlement Fund. Therefore, both should be approved as fair, reasonable and adequate. In addition, the fees requested by Lead Plaintiff’s Counsel are reasonable under the circumstances and should be awarded in the amount sought and the Lead Plaintiff award approved.

Dated: April 16, 2015

GLANCY BINKOW & GOLDBERG LLP

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**PROOF OF SERVICE BY ELECTRONIC POSTING
AND BY MAIL ON ALL KNOWN NON-REGISTERED PARTIES**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of a United States District Court. I am over the age of 18 and not a party to the within action. My business address is 1925 Century Park East, Suite 2100, Los Angeles, California 90067.

On April 16, 2015, I caused to be served the following document:

**REPLY MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL
OF THE PROPOSED SETTLEMENT, CLASS CERTIFICATION, THE PLAN OF
ALLOCATION, AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT
OF LEAD PLAINTIFF'S COSTS AND EXPENSES**

By posting this document to the ECF Website of the United States District Court for the District of Nevada, for receipt electronically by the parties listed on the attached Court's Service List and by U.S. Mail on any known non-ECF registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on April 16, 2015, at Los Angeles, California.

s/ Ex Kano S. Sams II
Ex Kano S. Sams II

Mailing Information for a Case 3:11-cv-00545-RCJ-WGC

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

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Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

- (No manual recipients)